RECENT CASES

ADMIRALTY — CONFLICT OF LAWS — REMEDIES — RECOVERY FOR DEATH BY WRONGFUL ACT IN COLLISION AT SEA. — In a collision on the high sea between two ships from different states, in which one ship was negligent, persons aboard the innocent ship were killed. The statutes of each state provided for recovery for death by wrongful act, but differed as to the measure of damages. The owner of the offending ship was sued by the representatives of the deceased. *Held*, that they could not recover. *The Middlesex*, 253 Fed. 142 (Dist. Ct.).

For a discussion of this case, see NOTES, page 713.

ADMIRALTY — JURISDICTION — IMMUNITY OF GOVERNMENT VESSELS FROM LIBEL. — For damage to a cargo carried upon the *Maipo* the owners sought to libel the ship. The *Maipo* was a transport in the Chilean navy, owned and manned by that government. It was chartered for hire by a private person contracting to carry freight, but by the charter-party the Chilean government reserved freight space, agreed to pay all port duties, and to manage the ship. *Held*, that the court had not jurisdiction. *The Maipo*, 252 Fed. 627.

Ships of war everywhere receive exemption from local jurisdiction. 2 MOORE, DIG. INT. LAW, 1906, § 254. Whether all public vessels should be so exempted was long a moot question. LAWRENCE, INT. LAW, 3 ed., 224; HALL, INT. LAW, 6 ed., 188. The sovereign cannot be sued, and in so far as jurisdiction is concerned the courts recognize no difference between a suit against the sovereign and a suit against his property. *Vavasseur* v. *Krupp*, L. R. 9 Ch. Div. 351; *The Siren*, 7 Wall. (U. S.) 152. While the existence of a right to a lien or to an action for salvage or damage from collision is recognized the strict application of the doctline of extraterritoriality forbids its enforcement. *United States* v. *Peters*, 3 Dall. (U. S.) 121; *The Exchange*, 7 Cranch (U. S.) 116; *Briggs* v. *Light Boats*, 11 Allen (Mass.) 157; *Pizarro* v. *Matthais*, 10 N. Y. Leg. Obs. 97; *The Parlement Belge*, 5 P. D. 197; *The Constitution*, 4 P. D. 39; *Young* v. *Scotia*, [1903] A. C. 501; *The Pampa*, 245 Fed. 137. Nor will a writ issue against a person upon a public vessel. 7 OPIN. ATT'Y GEN'L, 122; HALL, INT. LAW, 6 ed., 191. The English court has decided that immunity from local jurisdiction is not lost though the public vessel carry for hire merchandise and passengers. *The Parlement Belge*, *supra*. However, an ambassador's property which he has engaged in commerce has been attached. *Emperor of Brazil* v. *Robinson*, 5 Dowl. 522; 2 PHILLIMORE, INT. LAW, 3 ed., 222. There has been American opinion that because the owner could not be sued the action against the ship might be allowed. *Pizarro* v. *Matthais*, *supra*. See *United States* v. *Wilder*, 3 Sumn. (C. C. A.) 308, 316. A lien is enforced, therefore, upon property of the sovereign when not in his possession nor in public use, but in the possession of a bailee. *The Davis*, 10 Wall. (U. S.) 15. The rule would seem to extend to public vessels. *Long* v. *Tampico*, 16 Fed. 491. *The Attualita*, 238 Fed. 909. WESTLAKE, PVT. INT. LAW, 5 ed., 271. The courts recognize the hardship endured by a libellant forced to seek relief in distant foreign jurisdictions, especially where the merchant marine is becoming government controlled.

BANKS AND BANKING — NATIONAL BANKS — VALIDITY OF STATE TAX ON SHARES WITHOUT DEDUCTION FOR TAXABLE STOCK HELD BY BANK IN ANOTHER NATIONAL BANK. — The National Bank Act, as amended, provides (REV. STAT. § 5219) that "Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the

state within which the association is located." Plaintiff, a national bank, held stock in another national bank and was taxed as owner thereof. Taxes were also assessed against the shareholders of the plaintiff based on a valuation which included the stock ownership as an asset of the association. Plaintiff, on behalf of its shareholders, seeks to recover from the state a part of the taxes so levied upon them corresponding to assets of the value of this stock. *Held*, that such sum be refunded. Pitney, Brandeis, and Clarke, JJ., dissenting. *Bank of California, National Association* v. *Richardson*, U. S. Sup. Ct. Off., October Term, 1918, No. 262.

As instrumentalities of the federal government, national banks are exempt from state taxation, except as permitted by Congress. *M'Culloch* v. *Maryland*, 4 Wheat. (U. S.) 316; *City of Pittsburg* v. *First National Bank*, 55 Pa. St. 45. And section 5219 does not permit a state to tax such a bank upon its capital or upon its property, but only upon the shares as personal property of the holder. *Owensboro National Bank* v. *Owensboro*, 173 U. S. 664, 19 Sup. Ct. Rep. 537. An exception in this section authorizes taxation of realty. *Second National Bank* v. *Caldwell*, 13 Fed. 429; see *M'Culloch* v. *Maryland*, *supra*, 436. Also it is settled that a bank may be taxed as owner of stock in another national bank. *Bank of Redemption* v. *Boston*, 125 U. S. 60. Now the principal case holds that when the association pays such a tax, a corresponding deduction must be made in assessing its shareholders. This result can be reached only on the ground that the statute treated the bank and the shareholders as one, for purposes of state taxation. The proposition is fundamental, however, that a corporation is an entity distinct from its members, for taxation as in other respects. See 1 COOLEY, TAXATION, 3 ed., 687. Accordingly the Supreme Court has repeatedly held that a tax on a corporation or its property is not the legal equivalent of a tax on the stockholders, but that the two are distinct and different subjects-matter of taxation. See *Owensboro National Bank* v. *Owensboro*, *supra*, 677–81; T. R. Powell, "Indirect Encroachment on Federal Authority by the Taxing Powers of the States," 31 HARV. L. REV. 321, 339–44. Thus stockholders of a state bank can be taxed without deduction for its ownership of tax-exempt United States securities. *Cleveland Trust Co.* v. *Lander*, 184 U. S. 111, 22 Sup. Ct. Rep. 394. And under section 5219 stockholders of a national bank can be taxed, although its capital was wholly invested in such securities. *Van Allen* v. *The Assessors*, 3 Wall. (U. S.) 573. Moreover, where the realty of a bank has been directly taxed, the state is not required to make deduction in assessing the stockholders. *Commercial Bank* v. *Chambers*, 182 U. S. 556, 21 Sup. Ct. Rep. 863; *St. Louis National Bank* v. *Papin*, 21 Fed. Cas. No. 12,239; *People's National Bank* v. *Marye*, 107 Fed. 570, 579. It is difficult to see why the same principle should not apply to assets in the form of stock in another national bank.

BANKRUPTCY — PREFERENCES — TRANSFER PURSUANT TO PRIOR AGREEMENT LIQUIDATING THE DAMAGES. — The bankrupt had contracted to cut timber for a lumber company on the latter's lands, the funds by which the operations were to be carried on being furnished also by the lumber company. It was provided, in a clause which was construed to be an agreed ascertainment of damages, that in case of a default a nearby sawmill with its logging equipment belonging to the bankrupt should forthwith become the property of the lumber company. The agreement was entered into more than four months before bankruptcy proceedings were instituted, but the transfer of the property took place within the period. The trustee in bankruptcy sought to avoid as a preference the transfer of that part of the equipment which was composed of personalty. *Held*, that no preference was effected. *Stennick* v. *Jones*, 252 Fed. 345 (Circ. Ct. App.).

The court asserted that the company had a right to act not as a general